

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF APRIL 18, 2007**

REGULAR MEETING

9:00 A.M.

APRIL 18, 2007

PRESENT:

COMMISSIONERS:	Paul Biane, Chairman	Larry McCallon
	Bob Colven, Vice Chairman	Brad Mitzelfelt, Alternate
	Kimberly Cox	Mark Nuaimi
	James V. Curatalo, Alternate	Richard P. Pearson
	Dennis Hansberger	Diane Williams, Alternate

STAFF:

Kathleen Rollings-McDonald, Executive Officer
Clark H. Alsop, Legal Counsel
Samuel Martinez, LAFCO Analyst
Michael Tuerpe, LAFCO Analyst
Debby Chamberlin, Clerk to the Commission

ABSENT:

COMMISSIONERS: **A.R. "Tony" Sedano, Alternate**

9:00 A.M. – CONVENE CLOSED SESSION OF THE LOCAL AGENCY FORMATION COMMISSION –
Conference Room adjacent to the San Bernardino City Council Chambers located at 300 North D Street, First Floor, San Bernardino.

Conference with Legal Counsel – Existing Litigation (Government Code Section 54956.9(a)): San Bernardino Valley Water Conservation District v. Local Agency Formation Commission, Superior Court Case No. SCVSS 147526.

9:07 A.M. – RECONVENE TO REGULAR MEETING OF THE LOCAL AGENCY FORMATION COMMISSION – San Bernardino City Council Chambers.

CALL TO ORDER - FLAG SALUTE

Chairman Biane calls the regular session of the Local Agency Formation Commission to order and leads the flag salute.

Chairman Biane requests those present who are involved with any of the changes of organization to be considered today by the Commission and have made a contribution of more than \$250 within the past twelve months to any member of the Commission to come forward and state for the record their name, the member to whom the contribution has been made, and the matter of consideration with which they are involved. There are none. He asks if any Commissioners need to announce a conflict at this time, stating that he will abstain on Item 6 due to a financial conflict. Commissioners Nuaimi and Williams state that they also will abstain on Item 6 due to financial conflicts.

Chairman Biane states that this will be the last meeting that he will Chair since he will be absent for the May 16 meeting. He says it has been an exciting three plus years of chairing the meetings.

APPROVAL OF MINUTES FOR COMMUNITY MEETING OF MARCH 6, 2007, AND REGULAR MEETING OF MARCH 21, 2007

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Chairman Biane calls for any corrections, additions, or deletions to the minutes for both meetings. There are none. Commissioner Pearson moves approval of both sets of minutes as presented, seconded by Commissioner Nuaimi. Chairman Biane calls for any objections to the motion. There being none, the vote is as follows: Ayes: Biane, Colven, Cox, Hansberger, McCallon, Nuaimi, Pearson. Noes: None. Abstain: None. Absent: None.

CONSENT ITEMS

LAFCO considers the items listed under its consent calendar, which Chairman Biane states consists of: (1) approval of the Executive Officer's expense report; (2) approval of payments as reconciled for the month of March 2007 and noting cash receipts; and (3) review and adoption of the following resolutions reflecting determinations for the Victorville community:

Resolution No. 2954 for LAFCO 3038-Service Review and Sphere of Influence Amendment for City of Victorville, as Modified

Resolution No. 2955 for LAFCO 3039-Service Review and Sphere of Influence Amendment for Victorville Sanitary District

Resolution No. 2956 for LAFCO 3040-Service Review and Sphere of Influence Amendment for Victorville Recreation and Park District

Resolution No. 2957 for LAFCO 3041-Service Review and Sphere of Influence Amendment for Victorville Fire Protection District

Resolution No. 2958 for LAFCO 3057-Sphere of Influence Review (Consolidation and Related Amendments) for Victor Valley Water District and Baldy Mesa Water District, as Modified

Resolution No. 2960 for LAFCO 3019-Maintenance of Victor Valley Water District as Independent District (Alternative Proposal to LAFCO 2991), as Modified

Notice of these consent items has been advertised as required by law through publication in The Sun, a newspaper of general circulation. A Visa Justification for the Executive Officer's expense report and staff reports for the reconciled payments and Victorville community resolutions have been prepared and a copy of each is on file in the LAFCO office and is made a part of the record by reference herein. Staff recommendation is that the Commission approve the Executive Officer's expense report, approve the payments as reconciled for the month of March and note the cash receipts, and adopt the resolutions reflecting the determinations for the Victorville community.

Chairman Biane asks if there is anyone present wishing to discuss any of the consent calendar items. There is no one.

Commissioner Colven moves approval of the staff recommendations for the consent calendar items, seconded by Commissioner Pearson. Chairman Biane calls for any objections to the motion. There being none, the vote is as follows: Ayes: Biane, Colven, Cox, Hansberger, McCallon, Nuaimi, Pearson. Noes: None. Abstain: None. Absent: None.

CONTINUED ITEMS

CONTINUED FROM FEBRUARY 21, 2007 – CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTIONS FOR LAFCOS 3067A, 3067B, 3067C, 3067D, 3067E AND 3067F; AND (2) LAFCOS 3067A THROUGH 3067F—CITY OF SAN BERNARDINO ANNEXATION NO. 361 (ISLANDS 1 THROUGH 6 RESPECTIVELY) – APPROVE STAFF RECOMMENDATION TO TAKE OFF CALENDAR

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LAFCO conducts a public hearing continued from February 21, 2007, to consider the annexation of six separate islands to the City of San Bernardino (hereinafter referred to as "the City"). Notice of the original hearing on November 15, 2006, was advertised as required by law through publication in The Sun, a newspaper of general circulation in the area, and individual mailed notice of that hearing was provided to landowners and registered voters within and surrounding the reorganization area pursuant to State law and Commission policy. Individual notice of this hearing was provided to affected and interested agencies, County departments and those individuals and agencies requesting mailed notice.

Executive Officer Kathleen Rollings-McDonald presents the staff report, a copy of which is on file in the LAFCO office and is made a part of the record by its reference herein. Ms. McDonald states that at the February 21 hearing, the Commission expanded three of the six City islands and directed staff to conduct the required community outreach for these areas once a revised Plan for Service was received from the City. She reports that staff is awaiting receipt of the modified Plan for Service and is, therefore, recommending that this matter be taken off calendar, rather than continuing it from hearing to hearing. She notes that this will require readvertising of the hearing and mailing of individual notice. She says the staff report indicates that it is also recommended that these proposals be returned at the same hearing as LAFCO 3050, the Arrowhead Springs annexation.

Commissioner McCallon moves approval of staff recommendation, seconded by Commissioner Pearson. Chairman Biane notes that he has received no requests to speak. He calls for objections to the motion. There being none, the vote is as follows: Ayes: Biane, Colven, Cox, Hansberger, McCallon, Nuaimi, Pearson. Noes: None. Abstain: None. Absent: None.

DISCUSSION ITEMS

It is noted that Commissioners Biane, Nuaimi and Williams, who all stated previously that they would abstain from voting on Item 6, leave the hearing at 9:10 a.m.

Vice Chairman Colven assumes the Chair.

CONSIDERATION OF: (1) FINAL ENVIRONMENTAL IMPACT REPORT ADOPTED BY CITY OF RIALTO FOR RANCHO EL RIVINO SPECIFIC PLAN AND ANNEXATION (SCH NO. 2005101117), AS CEQA RESPONSIBLE AGENCY FOR LAFCO 3066; (2) ADOPTION OF FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS; AND (3) LAFCO 3066—REORGANIZATION TO INCLUDE ANNEXATIONS TO CITY OF RIALTO AND WEST VALLEY WATER DISTRICT, DETACHMENTS FROM BLOOMINGTON RECREATION AND PARK DISTRICT AND CENTRAL VALLEY FIRE PROTECTION DISTRICT AND DISSOLUTION OF COUNTY SERVICE AREA 70 IMPROVEMENT ZONE P-11 (CACTUS INVESTMENT LLC) – APPROVE STAFF RECOMMENDATION AS MODIFIED

LAFCO conducts a public hearing to consider a reorganization to include annexations to the City of Rialto and West Valley Water District, detachments from Bloomington Recreation and Park District and Central Valley Fire Protection District and dissolution of County Service Area (CSA) 70 Improvement Zone P-11 (Cactus Investment LLC). Notice of this hearing was advertised as required by law through publication in The Sun and the Rialto Record, newspapers of general circulation in the area. Individual mailed notice was provided to affected and interested agencies, County departments, those individuals and agencies requesting mailed notice and landowners and registered voters within and surrounding the reorganization area pursuant to State law and Commission policy.

Executive Officer Kathleen Rollings-McDonald presents the staff report, a copy of which is on file in the LAFCO Office and is made a part of the record by reference herein. Ms. McDonald states this proposal was initiated by landowner petition to allow for residential development of the territory. She shows maps of the reorganization area on the overhead display. She says the primary reorganization area, encompassing approximately 164+/- acres generally located north of El Rivino Road, east of Larch

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Avenue, south of Jurupa Avenue and west of the City of Rialto, is to be annexed to the City of Rialto (hereinafter "the City") and detached from the Bloomington Recreation and Park District (hereinafter referred to as "Bloomington RPD") and Central Valley Fire Protection District. She says the area to be annexed to the West Valley Water District encompasses approximately 127+/- acres generally located north of El Rivino Road, east of the existing West Valley Water District boundary, south of Jurupa Avenue and west of Cactus Avenue. She notes that a portion of the development project is currently part of the West Valley Water District. She says the area of the proposed dissolution of CSA 70 Improvement Zone P-11 encompasses approximately 37 acres generally located west of the existing City of Rialto boundary, north of parcel lines north of Cricket Drive, east of Cactus Avenue and southerly of parcel lines. She explains that this Improvement Zone was created to address service delivery to Tract No. 15544 approved by the County; she says that Tract was never finalized; but CSA 70 Improvement Zone P-11 has been legally formed since 1996. She shows an aerial view of the area, noting that the El Rivino Country Club will be developed for residential use.

Ms. McDonald discusses boundary issues. As outlined in the staff report, she says there are three primary issues of concern to be considered. First, she says this annexation will create a corridor of unincorporated territory to the southeast of the proposed reorganization. She discusses the three options available to the Commission in addressing the creation of this corridor which are: a) expansion of LAFCO 3066 to include the whole of the area; b) requiring the City to initiate the annexation of the corridor area as a condition of approval for LAFCO 3066; or c) approval of LAFCO 3066 creating the corridor, making the determinations required by Government Code Section 56375(m). She says that the reorganization area is legally uninhabited and that expanding this proposal to include this larger area would, in the staff view, terminate the proceeding since voters in that area have expressed opposition to annexation to the City and prefer to be included in the Bloomington Incorporation. She says option b to require the City to submit a reorganization proposal addressing the balance of the area, while its success or failure has not been tested in the past, again these voters in the area have expressed support for the incorporation of Bloomington. She says that is why option c is recommended by staff.

Ms. McDonald discusses the second boundary issue, stating that early in the process staff reviewed with City staff the Commission's directives that when development-related annexations are presented, the City will be required to address its "islands". She shows a map displaying the City's three totally-surrounded islands and one substantially-surrounded island in the North Rialto area and says those islands were reviewed with the City and the City evaluated the financial implications of providing service to those islands. She reports that staff understands that the City has taken the position that it was not financially feasible to annex those islands because of the City's inability to extend its utility tax to these areas. She says that when the staff report was published, staff had not seen the financial analysis, but she says that fiscal analysis prepared in 2005 was received on Monday. However, she points out that AB 1602 has been signed in the interim; and she says the City would receive the \$50 per capita associated with the AB 1602 calculation, as long as the annexations are completed prior to January 1, 2009. Ms. McDonald says that the chart on page nine of the staff report outlines the property tax transfers to be applied to the islands if they are initiated.

Ms. McDonald reports that the Commission has been presented with a letter today from the City expressing its position that, while it understands the importance of these islands, it wants to establish a phasing approach to address this issue. She says the Commission has agreed to a phasing approach for the City of San Bernardino, which agreed that six of its 13 islands would be initiated now, with the balance to be initiated later. She says that option is available for this proposal but she says staff believes that the four North Rialto islands should be addressed by the City now. She points out that the staff report also identifies four Bloomington islands that are not being addressed at this time, as shown on the display maps; and she explains that those islands are related to the Bloomington community and staff feels they should be addressed later. Ms. McDonald states that staff recommends that the Commission require the City to initiate annexation of its four northern islands prior to issuance of the Certificate of Completion for this proposal. She notes that this annexation has 100% landowner consent so there will be no protest proceeding.

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Ms. McDonald discusses the third boundary issue, stating that there is no direct connection from the annexation area to the City. She explains that the connection to the City is along a parcel boundary adjacent to an industrial development which is a part of the Agua Mansa Industrial Corridor Specific Plan. She says there is no roadway connection from this industrial area through to the proposed annexation territory and she says that the development proposes two gated communities, with internal private roads, and no through connection to the City. She adds that the Development Agreement identifies transportation improvements required to make the delivery of service more efficient. She states that staff does not believe this is an overriding issue.

Ms. McDonald discusses the existing land uses within the primary annexation area, which includes the non-operational El Rivino Country Club and vacant lands, and the land uses surrounding the site, as outlined in the staff report. She reports that on February 20, 2007, the City Council adopted the General Plan Amendment and Final Environmental Impact Report for the El Rivino Specific Plan area and that the pre-zoning will be required to remain in effect for a period of at least two years, unless certain findings are made by the City Council.

Ms. McDonald discusses the financial effects and service considerations. She states the City has certified as to the accuracy of the Plan for Service and Fiscal Impact Analysis and she says the mechanisms for the delivery of services are outlined in the staff report. She says the West Valley Water District provided a Plan for Service for the extension of its facilities into the area. She discusses two areas of concern related to the detachment from the Bloomington RPD. She reports that the County Special Districts Department, administrator for the Bloomington RPD, objected to the detachment of the District on the basis that it will further erode the tax base necessary to support the District and requested that the retention of the overlay of the Bloomington RPD be considered. She says that when the County's request was conveyed to the City, the City indicated it wants to adhere to the Commission's policy to detach the District. She also notes that the draft resolution contains a condition of approval indicating that the responsibility for the streetlights in the area will be transferred to the City upon completion of the reorganization.

Ms. McDonald discusses the environmental considerations, reporting that LAFCO's Environmental Consultant, Tom Dodson and Associates, has reviewed the City's environmental documents and found them adequate for the Commission's use as a CEQA responsible agency. She says Mr. Dodson drafted a Statement of Overriding Considerations for the Commission's review and adoption, a copy of which is attached to the staff report.

Ms. McDonald says staff believes the Commission should approve this reorganization for those reasons outlined in the staff report. She says the area is proposed to develop at urban levels of land use; therefore, it requires municipal-level services. She says the findings required by Commission policy and State law are outlined in the staff report and are made a part of the record by reference herein. She says the staff recommendation is outlined on pages one, two and three of the staff report and includes that the Commission: 1) take the actions listed with respect to the environmental review; 2) modify LAFCO 3066 to include the dissolution of CSA 70 Improvement Zone P-11 as a function of the reorganization; 3) approve LAFCO 3066, as modified, making the determination outlined in the staff report, and subject to the conditions outlined in the staff report, including the condition that the issuance of the Certificate of Completion for LAFCO 3066 shall be held in abeyance, for a period not to exceed six months, until the City has initiated annexation of the four North Rialto islands identified by staff; and 4) adopt LAFCO Resolution No. 2961 setting forth the Commission's terms, conditions, findings and determinations.

Commissioner Hansberger asks what the acreage is of the remaining area to the east and south of the annexation area. Ms. McDonald responds that it is about 210 acres. Commissioner Hansberger comments that he thinks the staff recommendation is strange in that the City is being asked to initiate annexation of areas five to six miles north of this project but the City is not being asked to initiate annexation of areas immediately adjacent to this project. He says that the North Rialto islands are a policy issue the Commission would like to deal with in terms of getting them annexed, but he says there should not be any connection to this annexation and those islands since the areas are so far apart. Ms. McDonald comments that this is the same precedent used with the City of San Bernardino for the

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Arrowhead Springs annexation. Commissioner Hansberger responds that those islands are all in north San Bernardino in the same general vicinity of Arrowhead Springs. He says this project is a mile or two south of Interstate 10 and that the North Rialto islands are two to four miles north of Interstate 10, in an entirely different region of the community. Ms. McDonald says the four Bloomington islands shown on page 10 of the staff report could be addressed. Commissioner Hansberger responds that he did not understand why staff recommended dealing with islands that are so far away and did not recommend dealing with those closer islands. Ms. McDonald states that the reason for doing so is because those northern islands have been historically reviewed with the City of Rialto as a part of this proposal since 2005, so staff continued that position forward. Commissioner Hansberger says maybe staff should not have been reviewing those islands with a project so far away.

Commissioner Mitzelfelt asks whether staff is recommending that this annexation be held up pending the inclusion of the four northern islands. Ms. McDonald says that the recommendation is that the issuance of the Certificate of Completion be held until the four islands have been initiated, not completed. She explains that means that annexation of the islands has been initiated by City resolution and the property tax transfer process has been completed; and she says once that was accomplished, the Certificate of Completion for this annexation would be issued. She indicates that there would be hearings before the Commission to review the northern islands. Commissioner Mitzelfelt says he agrees with Commissioner Hansberger because he does not see any connection or nexus between this annexation and those islands. He says he thinks it would be preferable if the Commission and its staff worked with the City to deal with those islands and get that process initiated, but not hold up this annexation. Ms. McDonald asks if he is recommending that staff recommendation 3c, which discusses a condition to be imposed, be modified to require that annexation of the North Rialto islands be initiated and that staff then be directed to discuss a phasing strategy. Commissioner Mitzelfelt responds "No", stating that the initiation could take place whenever appropriate. He adds that he thinks the phased strategy is reasonable but says that he does not think it is fair to delay this annexation because of the four northern islands.

Commissioner McCallon points out that the City of Rialto in its letter says it realizes the importance of these four islands and wants to discuss the island annexation issue in more detail to determine a timeline for outreach and to review a phasing annexation strategy. He says he thinks it is important that the City make the commitment and work with LAFCO staff to come up with a timeline for when these annexations will be processed, but says he agrees with both the Supervisors that it is probably not appropriate in this case to tie this annexation to the initiation of those islands.

Commissioner Hansberger says he knows of a number of projects up in that northern region that will be coming forward and which the City will be interested in annexing. He discusses that there should be something other than that the areas are in the same town—that there should be some physical relevance to the service connections. He says there are projects in the north end of the City which do have service relevance and it would make more sense to tie the northern islands to those projects when, and if, they come forward. Ms. McDonald says staff does not know whether those projects will ever come forward so she says that if the Commission wants a commitment from the City as to a timeline for moving forward with the northern islands, the only correspondence that has been received is what was presented to the Commission this morning.

Commissioner Cox asks if there is any motivation for the City to move forward with annexing those islands, other than the inclusion of the condition of approval. Ms. McDonald reports that the City Council's position is not to initiate any annexation that does not have substantial landowner and voter support; and that these islands have existed in this area in some configuration for over 28 years because the people in the areas historically have not wanted to be a part of the City. She notes that one motivation for people to agree to annexation is that, if they are annexed as part of an island annexation, the City's utility tax cannot be extended to them. However, she says if they were annexed under a regular City annexation, that City utility tax would be extended.

Commissioner Pearson says that the Commission has to keep in mind that one of its goals is to do something about the islands that are scattered throughout cities by bringing them into the city to enhance service and reduce costs to the public. He says the concern over the City's inability to extend the utility

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tax is valid; but he notes that Ms. McDonald's presentation pointed out that the State recognized this and he says that it appears from the numbers provided in the staff report that the \$50 per capita associated with the AB 1602 calculation will make up for the utility tax. He says the willingness of the people in those islands to be annexed has been a problem for 28 years and probably will not change. He says that although they do not have a nexus of location, the islands are within the City limits overall; that they have an opportunity to bring the islands into the City for the benefit of the citizens and eliminate any further concern with those islands. He says he sees as incidental the fact that the initiation of those northern islands is tied to an annexation in the southern part of the City and says he thinks they should move forward with staff recommendation.

Ms. McDonald says that if the Commission feels that initiation of annexation of those islands is inappropriate as a condition of approval, she understands that representatives of the City are present and, if they wish to make a commitment to initiate the four islands within a given period of time, that could be included as a finding in the resolution.

Vice Chairman Colven asks if there is anyone present from the City to respond.

Ed Scott, a City Council Member, says the City Council recognizes the importance of the annexation of those four northern islands but he says they also recognize the fact that it is in the best interest of the City to eventually annex them for a number of reasons, including public safety and service. However, Mr. Scott says the City Council is of the same opinion as the two Supervisors that their annexation should not be tied to the El Rivino project. He says they believe the islands should be tied to a future project that will occur in North Rialto or that discussions should be opened up with the City and LAFCO staffs regarding a phased annexation of those areas. Vice Chairman Colven asks if the City has an additional proposal in North Rialto and wishes to include the annexation of the four islands at that time. Mr. Scott says he believes that would be the appropriate time to do that. Vice Chairman Colven asks what the timeline on that proposal would be. Mr. Scott responds that the project is in process in the City's Planning and Building Departments so the project is ongoing.

Commissioner Curatalo asks Ms. McDonald's opinion of this second project. Ms. McDonald responds that she knows the project exists; that she does not know its actual status in the development process; but that it is an extremely large project that will take several years. She points out that the Commission must understand that with an island annexation, the AB 1602 \$50 per capita funding will expire July 1, 2009, so she says if these islands are not annexed by that time, that money will disappear. Commissioner Curatalo says that his understanding is that even if staff recommendation is approved as worded, the completion of this annexation is dependent only on the initiation of the annexation of those four islands, not their completion, so he asks if there really would be any material change if the islands were deferred to that time. Ms. McDonald responds that the issue is on the phasing of the annexations or the actual completion and introduction of these islands into the City. She explains that once these annexations are initiated, a hearing must be held within 90 days of the issuance of the Certificate of Filing, so staff could be directed to bring the islands back at a hearing to discuss a solid phasing program.

Vice Chairman Colven opens the public hearing and calls on those wishing to speak.

Virginia Geil, representing the Bloomington Preservation Foundation, discusses that she wants to see that a senior village for Bloomington is built. She says Reggie King (developer of the El Rivino project), who has been a good friend of hers and has done a lot for Bloomington, told her a short time ago that there is a piece of land along El Rivino which could be used for a senior village. She asks that the Commission not approve annexation of this area; she says she desperately needs it for the senior village.

Alexia King, a member of the Bloomington Incorporation Commission (BIC), asks that the Commission deny annexation and says that BIC, which is still alive and well, wants this area for the Bloomington Incorporation. She says every time an area is annexed away from Bloomington, the ability of Bloomington to support itself as a city is undermined. She says the nibbling away of Bloomington's edges means that there will be a whole population in their community that will be denied city services that she heard the Commission discussing as being very important in the North Rialto islands. She says

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denial of staff recommendation will allow Bloomington to move forward with incorporation to provide the people a level of service they will not get from another city for years to come. Ms. King discusses a second concern, stating she and her husband own a nursery in Bloomington and are served by the West Valley Water District. She says that three or four years ago they had to establish a second meter to provide enough water for the nursery and they now they frequently have hardly enough water volume to keep one hose running. She says she talked to the Water District and its answer was that there is just too much demand. She says that calls into question any level of development that may deny her water that is needed for her livelihood.

Gilbert Loop, a resident in the area south of the annexation area, says this annexation will cut him off from Bloomington and create an island so that he eventually will be annexed to Rialto, of which he is not in favor. He says he is not against the Cactus Investment LLC development but is against this annexation, which will cut off more tax base for the Bloomington Incorporation, which is still going forward.

Eric Davenport, Chairman of BIC, states that the Commission was presented this morning with a letter outlining the reasons why BIC is requesting that a decision on this annexation be deferred or at least postponed until the next meeting. He reports that BIC has been meeting with members of the City of Rialto as well as Cactus Investment LLC in a new spirit of cooperation in the incorporation effort, which is moving forward. He says they need this area to remain part of Bloomington; that they are not opposed to Cactus Investment's development and it will help increase Bloomington's net worth. He says this annexation would create an island that is part of the incorporation effort and will severely hamper their efforts. He requests that the Commission postpone its decision at least until next month so that BIC can continue talking with the interested parties to see how they can all come together to make incorporation work.

Vice Chairman Colven asks if there is anyone else wishing to speak on this item. There is no one and he closes the hearing.

Commissioner Mitzelfelt moves to approve staff recommendation, with Recommendation 3c modified to direct staff to work with the City of Rialto to develop an annexation strategy to bring forward the four islands in its northern sphere in a coordinated and phased manner, once the islands have been initiated. Commissioner Cox seconds the motion. Vice Chairman Colven asks if he wishes to establish any timelines in his motion. Commissioner Mitzelfelt states that he is sensitive to the issue of the AB 1602 deadline but says he thinks that the intent here is to move forward as soon as is practical.

For clarification, Ms. McDonald asks if the motion is removing the condition to withhold the Certificate of Completion. Commissioner Mitzelfelt responds "yes". Ms. McDonald says her understanding of the motion is that staff recommendation 3c will be modified, striking the second sentence about holding the issuance of the Certificate of Completion for this proposal in abeyance. She asks if the intent is to then say that the City of Rialto is required to initiate the annexation of the four islands within the next six months or the next year. She points out that this would become a finding in the resolution instead of a condition since the Certificate of Completion will not be held in abeyance. Commissioner Mitzelfelt responds that a finding is fine, but says the date he was sensitive to is 2009. Ms. McDonald explains that to be sure that the process is completed within that time period, the City will need to initiate within one year. She asks if the City will be required to make a commitment to fulfill that finding by letter. Commissioner Mitzelfelt says that a finding within a one year period and a letter from the City seems reasonable but he says he is interested in hearing how the City feels about that. He adds that his motion also included direction to staff to work with the City in developing a phasing strategy for the annexations.

Commissioner Pearson asks if they are saying that the annexation of those four islands must be completed within one year. He points out that they have been given an extension until 2014 to process island annexations; but he says if they jeopardize that timeline, the annexation of those islands, which have been around for 28 years, might not get completed at all. He says there must be some positive steps taken with whatever is decided today to ensure that the completion of the annexations of those islands takes place within a reasonable time period. Ms. McDonald explains that the requirement for the

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City to initiate annexation of those islands within one year is the direction of the Commission. She says if the City fails to fulfill that finding, staff will let the Commission know. But she points out that the only way to guarantee the requirement for initiation is through the conditional approval recommended by staff. Commissioner Pearson comments that is what he was afraid of and he discusses that they went through a similar procedure with the City of San Bernardino several months back. He says that after discussions back and forth, the City agreed to move forward with its islands in a phased approval, but he says the Commission does have some assurance that will happen because the City wants an action taken on its Arrowhead Springs project.

Commissioner Hansberger comments that there is relevance between those San Bernardino islands and the action the City is asking for on its other project, noting that there would not have been relevance if the islands were located south of Mill Street. He says it is like saying they are on the same planet, so it is the same issue; but he says it is not.

Commissioner Mitzelfelt says there is sentiment to not condition this annexation on the initiation of those four islands so he says this is a compromise. He says that with the working relationship they have with the City, he feels that this issue will be taken care of and that the Commission has the ability to address this in the future if the finding has not been complied with in one year.

Legal Counsel Clark Alsop says that as he understands the motion, staff recommendation 3c will now only include the first sentence and everything else in that paragraph will be stricken. He says a finding will also be added to the resolution indicating that the Commission hopes that the City will initiate the island annexations within one year. Commissioner Mitzelfelt says that the word "hopes" should not be used, but something stronger such as the Commission "expects". He says the motion also includes that staff will work on a phasing strategy with the City.

Commissioner McCallon asks if the City would like to comment on the timeline the Commission is discussing.

Mr. Scott says he does not have the authority to make a commitment for the entire City Council but he says they clearly have an intention to annex those islands. He says he would like to do some research into the funding that would be available to assist the City in doing that before he makes any commitment. He says he thinks it would be appropriate that City staff move ahead within twelve months to start the annexation process of the pockets up in the north end of Rialto.

Commissioner Hansberger says the County did not create any islands; that they were created by the cities when the cities annexed everything except for the areas they did not want. He discusses that his view is that if cities are willing to come to LAFCO and ask for LAFCO's assistance to accomplish things, then the cities have to accept responsibility for everything within their boundaries. Mr. Scott responds that he tends to agree with Commissioner Hansberger and he thinks the City Council does too. He says that the four islands in the north end of the City, because of the lack of public safety on the part of the County, have become havens for crime up there and he says the City would love to see its Police Department serving those islands. He says that the majority of residents up there want to be annexed to the City for better services and he says his issue is not so much what it is going to cost the City but to do it in a manner that works. He points out that the County, because of its funding sources, does not put a lot of money into the infrastructure in those pockets so he says the City has to look at ways to fund bringing the infrastructure up to City standards. Mr. Scott assures the Commission that from the Council's standpoint, those pockets should be in the City and they believe the residents up there actually do want to be in the City. He says he is clearly in favor of moving ahead with annexation.

Commissioner Hansberger comments that it has been the unfortunate practice for cities to take the things that pay the money and leave the things that cost money to the County, and then they complain about the County not doing its job. He says his view is that if the cities are going to take the money, they should also take the problems and the entire community so that some people are not left hanging out there with no resources.

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Commissioner Cox, for clarification, modifies her second to Commissioner Mitzelfelt's motion on staff recommendation 3c so that it only includes the first sentence and everything else is stricken. Commissioner Mitzelfelt says he wants the motion to include the finding outlined by Ms. McDonald. Ms. McDonald says the balance of recommendation 3c regarding the commitment and requirement of the City to initiate the four northern islands within one year has been moved to a finding of the resolution and she says that all references to withholding the Certificate of Completion for this proposal will be removed.

Vice Chairman Colven asks if that is satisfactory to Commissioner Mitzelfelt and he says it is. Vice Chairman Colven asks if there is any further comment. There being none, he calls for a voice vote on the motion and it is as follows: Ayes: Colven, Cox, Hansberger, McCallon, Mitzelfelt, Pearson. Noes: None. Abstain: Biane (Mitzelfelt voting in his stead), Nuaimi, Williams. Absent: None.

Legal Counsel Clark Alsop says that for the record, the Commission met in Closed Session at the beginning of the meeting to discuss the litigation listed on the Agenda. He announces that no reportable action was taken.

It is noted that Commissioners Biane, Nuaimi and Williams return to the hearing at 10:15 a.m. Chairman Biane assumes the Chair.

REVIEW AND ACCEPT AUDIT REPORT FOR FISCAL YEAR ENDED JUNE 30, 2006 – APPROVE STAFF RECOMMENDATION

LAFCO reviews and considers acceptance of the Audit Report for the Fiscal Year ended June 30, 2006. Notice of this review was advertised as required by law through publication in The Sun, a newspaper of general circulation. Individual mailed notice was provided to affected and interested agencies and County departments.

Executive Officer Kathleen Rollings-McDonald presents the staff report, a copy of which is on file in the LAFCO office and is made a part of the record by its reference herein. Ms. McDonald says that staff recommendation is that the Commission receive and file the materials submitted by Moreland & Associates related to the Commission's Audit for Fiscal Year 2005-06. She says that Kathryn Beseau from Moreland & Associates is present today if there are any questions about this material.

Chairman Biane asks if there are any questions regarding the Audit and there are none. He states he has no requests to speak and asks for a motion.

Commissioner Colven moves approval of staff recommendation, seconded by Commissioner McCallon. Chairman Biane calls for objections to the motion. There being none, the vote is as follows: Ayes: Biane, Colven, Cox, Hansberger, McCallon, Nuaimi, Pearson. Noes: None. Abstain: None. Absent: None.

PRELIMINARY BUDGET REVIEW FOR FISCAL YEAR 2007-08 – PROPOSED FEE SCHEDULE – APPROVE STAFF RECOMMENDATION

Executive Officer Kathleen Rollings-McDonald states that Item 8 has two items to be discussed, the proposed Schedule of Fees and Charges (hereinafter referred to as the "Fee Schedule") and the Proposed Budget for Fiscal Year 2007-08. She states that Michael Tuerpe will present the proposed Fee Schedule.

LAFCO conducts a public hearing for the preliminary review of the proposed Fee Schedule for Fiscal Year 2007-08. Notice of this hearing has been advertised as required by law through publication in The

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Sun, a newspaper of general circulation. Individual notice of this hearing was provided to affected and interested agencies, County departments, all Cities/Towns, Independent Special Districts and the County.

LAFCO Analyst Michael Tuerpe presents the staff report, a copy of which is on file in the LAFCO office and is made a part of the record by its reference herein. Mr. Tuerpe says staff is proposing that LAFCO filing fees for jurisdictional changes be based on two criterion, the acreage of the proposal and if the application type is related to either a city or a district. As identified in the staff report, he says staff proposes that the acreage categories utilize 150 acres as the basis for the splits, noting that staff believes that a tiered structure, rather than a flat fee, will better allow LAFCO to recover costs associated with processing proposals. He says there will be a separate filing fee for city and district applications because district proposals are typically less complex to evaluate due to fewer municipal services. He says staff proposes a policy shift to move city island annexations into the standard annexation category but with an automatic fee reduction of 50%, with all other fees and deposits assessed at full cost. He says the proposed change to Policy #18 is attached to the staff report.

Mr. Tuerpe says the second major change relates to out-of-agency service contracts. As outlined in the staff report, he says staff proposes an increase for development-related service contracts. He reports that to better reflect experience with actual costs, staff is proposing to increase deposits for preparation of an Environmental Impact Report, the display ad required for an Incorporation, Formation, Consolidation or Dissolution, preparation of a Comprehensive Fiscal Analysis for an Incorporation proposal and for Protest Proceedings.

Mr. Tuerpe says staff proposes a change to the Landowner Notice Deposit. He reports that at the January 2007 hearing, the Commission approved a revision to the forms required for Landowner Notice; and, based upon that decision, the 50 cent per parcel deposit no longer applies. He says staff proposes to replace the 50 cent per parcel deposit with a deposit structure identical to the Registered Voter Notification Deposit, which is a flat \$450 deposit, of which \$150 is non-refundable.

Mr. Tuerpe says the staff recommendation is outlined on page one of the staff report and includes that the Commission: 1) review the proposed modifications to the Fee Schedule and Implementation Policies and provide direction to staff on changes, corrections or amendments to be included; 2) direct staff to forward the Fee Schedule and Implementation Policies to the County, all Cities/Towns, and all Independent Special Districts for their review and comment; and 3) schedule the final review and adoption of the Fee Schedule and its Implementation Policies for May 16, 2007.

Chairman Biane states he has no requests to speak on this item and he asks if the Commission has any questions for staff. Commissioner Nuaimi moves approval of staff recommendation, seconded by Commissioner Cox. Chairman Biane calls for objections to the motion. There being none, the vote is as follows: Ayes: Biane, Colven, Cox, Hansberger, McCallon, Nuaimi, Pearson. Noes: None. Abstain: None. Absent: None.

**PRELIMINARY BUDGET REVIEW FOR FISCAL YEAR 2007-08 – REVENUE AND APPROPRIATION
ADJUSTMENTS FOR FISCAL YEAR 2006/07 AND PRELIMINARY BUDGET – APPROVE STAFF
RECOMMENDATION**

LAFCO conducts a public hearing for a review of Revenue and Appropriation Adjustments for Fiscal Year 2006/07 and the preliminary review of the Proposed Budget for Fiscal Year 2007-08. Notice of this hearing has been advertised as required by law through publication in The Sun, a newspaper of general circulation. Individual notice of this hearing was provided to affected and interested agencies, County departments, all Cities/Towns, Independent Special Districts and the County.

Executive Officer Kathleen Rollings-McDonald presents the staff report, a copy of which is on file in the LAFCO office and is made a part of the record by its reference herein. Ms. McDonald states that the staff report outlines the Proposed Budget, noting that the spreadsheet in Attachment 1 projects a Proposed Budget through Fiscal Year 2008-09. She discusses the adjustments recommended for the current

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Fiscal Year which include an increase in total Appropriations to \$1,179,167 (an increase of \$95,286) by increasing Account 2400 (Legal Counsel) expenditure authority to \$140,000 and increasing Account 2445 (Other Professional Services) expenditure authority by \$5,286. She says staff recommends an increase in appropriations authority within Account 2445 (Other Professional Services) to a total of \$110,000 by transferring \$22,556 from Account 6025 (Reserves) and \$33,100 from Account 5010 (GIS Tech). She explains that the recruitment process for the shared GIS Tech II position with the County's Economic and Development Agency was not successful so that funding is being redirected. She says staff recommends an increase in Revenue Account 9555 (Legal Services) to \$110,000 to reflect anticipated revenues for repayment of litigation-related services. She notes that LAFCO has received payment toward costs for litigation, but she says that some of these costs are not recoverable.

Ms. McDonald discusses next years budget, stating that about 80% of the Commission's time will be spent on Municipal Service Reviews/Sphere of Influence Updates (hereinafter referred to as MSRs) in order to complete them by July 1, 2008. She points out that this is a function for which no fee is authorized by statute and no revenue can be projected to cover those costs. She says an increase to the mandated apportionment to the County, Cities/Towns, and Independent Special Districts is required to pay for these costs. She reports that the net cost (estimated to be \$1,014,645) will be apportioned for each category; that the Auditor is required to prepare the calculation by July 1; and that upon adoption of the Proposed Budget, staff will request the Auditor to provide an estimate of the apportionment to be included in the materials to be forwarded to the three categories for review.

For Fiscal Year 2007-08, Ms. McDonald states that staff is recommending that the Commission take the actions related to its Proposed Budget, as outlined on page two of the staff report. She says staff is recommending a 3% Cost-of-Living Adjustment (COLA) for all LAFCO positions, with the exception of her position, and adoption of Resolution No. 2962 providing for modifications to salary ranges to provide for the COLAs for the affected LAFCO employees. Regarding policy items, she says staff recommends that the Commission authorize the addition of an additional Deputy Clerk to the Commission position, at Range 42, with an amendment to the LAFCO Benefit Plan to designate that position within a new LAFCO Benefit Plan Group C, which mirrors the County Exempt Compensation Plan Group D. She explains that the Commission currently has a long-term contract for supplemental clerical help and says staff is requesting that a permanent position be funded. Ms. McDonald says that staff recommends an increase in the Commissioner stipend to \$200, even though other LAFCOs pay \$150. She explains that the Commissioners' stipend has historically been tied to the stipend paid the County Planning Commissioners and she says their stipend was recently increased from \$150 to \$200 per meeting. She notes that this will require an amendment to Policy 31 in order to institute this change. She says she is asking for authorization to sign the Production Support Agreement with the County's Information Services Department to provide information technology services and to sign the facilities use agreement with the City of San Bernardino for use of the City Council Chambers for Commission hearings and the provision of digital recording of the meetings.

Ms. McDonald asks for direction from the Commission on any budgetary changes to be provided in the Proposed Budget. She says that once adopted, the Proposed Budget will be sent to the County, the 24 Cities/Towns, and the 52 Independent Special Districts for review and comment. She says staff recommendation includes that the public hearing for the formal adoption of the Final Budget be scheduled for May 16, 2007.

Commissioner Cox comments that page five of the staff report indicates that Account 2400 (Legal Counsel) has incurred \$123,000 in litigation costs related to the service review for San Bernardino Valley Water Conservation District. She asks whether there has been any reimbursement or share of cost from San Bernardino Valley Municipal Water District (Muni). Ms. McDonald says \$73,000 has been received from Muni. Commissioner Cox says she has a real problem with LAFCO paying for a lawsuit and never getting compensated. Ms. McDonald responds that the Commission has a legal indemnification policy and that it is included as a condition of approval in resolutions. However, she explains that for this litigation, since it was an MSR and sphere review that was objected to, LAFCO was the applicant so there was no one to indemnify LAFCO. She says that when Muni intervened in that lawsuit, it agreed to help pay for the costs. She points out that a decision was rendered last month on that lawsuit, but she says

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new litigation has been filed on a separate proposal and that Muni has filed to intervene on that case as well. Commissioner Cox states that she is against frivolous environmental lawsuits that the Commission must defend and there is no compensation or reimbursement for the public entities defending these lawsuits.

Commissioner Nuaimi asks whether staff is keeping an account of these State unfunded mandates, such as this liability that came out of the State mandate for MSRs. Ms. McDonald responds that staff is aware of the costs. Commissioner Nuaimi asks whether CALAFCO is pursuing legislation on this issue. Ms. McDonald says there is no legislation on the horizon to address that issue that she knows of, even though many LAFCOs have objected to unfunded mandates. She says that at one time, staff filed with the State for reimbursement of unfunded mandates on Commission hearings and the cost for publications but she says the State really did not know what a LAFCO was and declined to review the request because it did not comply with its guidelines. Commissioner Hansberger inquires whether anyone has filed a lawsuit to challenge these unfunded mandates and whether there is adequate standing to require the State to pay the costs. Ms. McDonald responds that LAFCO would have to pay the law firm of Best Best & Krieger to file that lawsuit, so that has not been done.

Chairman Biane says CALAFCO has taken a support position for SB 819, which is a continuation of these mergers of districts, and he asks if they can try to have that bill amended. Ms. McDonald responds that bill is related to the consolidation of unlike districts and an application for change, while the proposal that was litigated was an MSR process, with the Commission as an applicant. She says costs can be recovered on the proposed consolidation of Muni and the Water Conservation District through the indemnification policy and that Muni will be paying for those costs.

Commissioner Pearson asks if staff is still using help from Orange LAFCO on the MSRs. Ms. McDonald says that Orange LAFCO was very helpful in getting through the Victorville community reviews. She says that it may be possible to use them again in the future, but she says they have lost staff over the past year. She says staff does keep track of costs for processing the MSRs/sphere updates, but she says those are direct costs and there are staff costs. She reports that the State's position is that LAFCOs exist to perform these services and that they are funded by the people they represent, so it is a shared cost. Commissioner Hansberger asks again whether they have any standing to challenge the State-mandated action or whether it is a protected cost under Proposition 90. Legal Counsel Alsop responds that it is possible to challenge something like that, but he says that from what has been seen so far, the State is not very receptive to responding. He says one of the problems is that this is a State Commission performing local functions and it has the ability to charge the operating expenses to the County, the cities and special districts. Commissioner Cox asks if it is possible to obtain indemnification insurance to cover the Commission for MSRs since the Commission is liable to have additional vulnerability as it moves for and makes recommendations on MSRs. Ms. McDonalds responds that she does not know but she can look into that.

Commissioner Nuaimi says he appreciates that staff has provided in the spreadsheet in Attachment 1 the budget projection for Fiscal Year 2008/09. He says he noticed that the regular salary does not go up for the 3% COLA amount and questions the rationale for not projecting that for 2008-09. Ms. McDonald says that the salaries proposed for the upcoming year include cashouts for the retirement of Debby Chamberlin, Clerk to the Commission. She explains that if the costs for the Clerk's retirement are taken out of the 2007-08 Regular Salary, they will see that the 3% is projected for 2008-09. Commissioner Nuaimi says that the 1010 Regular Salary account includes costs for vacation cashouts that would not come under termination payments. Ms. McDonald says that termination payments will pay out to Debby after she actually leaves but that the other cashouts are included in the Regular Salary Account since they will occur while she is still employed and will count toward her earnable compensation for retirement. Commissioner Nuaimi asks whether the Salary Reserve-Merit Increase account is an increase in compensation or a bonus account. Ms. McDonald responds that account is set aside for a determination of merit increases, should they occur during the year. She says there is no guarantee on the merit increase.

Chairman Biane calls for further questions. There are none. He says he has no requests to speak.

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Commissioner McCallon moves approval of staff recommendation, seconded by Commissioner Colven. Chairman Biane calls for objections to the motion. There being none, the vote is as follows: Ayes: Biane, Colven, Cox, Hansberger, McCallon, Nuaimi, Pearson. Noes: None. Abstain: None. Absent: None.

(It is noted that Commissioner Hansberger leaves the hearing at 11:45 a.m.)

PENDING LEGISLATION

Ms. McDonald states that the Commissioners have been provided with the CALAFCO Legislative Committee Agenda that identifies bills of concern or interest to CALAFCO and says she has provided copies of those bills she believes the Commission needs to look at further. She discusses SB 819 and says that also at the Commissioners' places today is a letter signed by Chairman Biane in support of this Bill. She says the hearing for SB 819 was held yesterday and that at last month's meeting, the Commission indicated support for this Bill which removes the sunset provisions for the consolidation of unlike districts. She notes that it has support in general from most interested parties, except for the Water Conservation District and the Association of California Water Agencies, whose Boards of Directors have taken a "watch" position on the Bill.

Ms. McDonald says AB 1744 is the omnibus bill from CALAFCO proposing technical changes; that there is some interest for AB 745 regarding financial disclosures and reporting requirements for petitions. She says that SB 301 proposes to direct the State Legislature to create a fund at the State level to fund incorporations. She says this is intended to help the East Los Angeles Incorporation effort but would apply Statewide and there is concern from many areas that creation of this fund might support otherwise non-financially viable incorporations.

(It is noted that Commissioner Mitzelfelt leaves the hearing at 11:50 a.m.)

Ms. McDonald discusses AB 343 which she says will change the requirement as to when materials can be presented to the Commission. She says it provides that if the information is received after the publication of the Agenda packet, it cannot be provided to the Commission or discussed. She points out that means that this legislative report could not have been provided to the Commission this morning, nor could the letter from BIC. She says she believes this is a case of unintended consequence; that this could be a problem for the Commission's purposes and those people who come to the hearings; and that this would require the Commission to keep continuing hearings if new information came to light after the Agenda packet was provided. Commissioner McCallon comments that another disturbing fact about this Bill is that it says "unless all writings that relate to that..." He says that is very broad.

Legal Counsel Clark Alsop explains that this grows out of a court of appeal decision that said it was okay for a city manager to talk to the city council members and this is the newspaper's response to that. Commissioner Williams says that would preclude a resident from coming to the Commission on an issue with their own powerpoint presentation or submitting a letter. Ms. McDonald says the item would have to be continued. Chairman Biane says that the Commission could not use that presentation or letter in considering its decision. Commissioner Nuaimi says this essentially abolishes public hearings. Ms. McDonald says it further thwarts the open discussion of issues. She reports that LAFCO will oppose this Bill but she points out that it also applies to any meetings, including those of cities and special districts. She says the Commission's disapproval of this Bill will be conveyed to CALAFCO.

EXECUTIVE OFFICER'S REPORT

Ms. McDonald says the Commissioners have been presented today with a Notice of Nominations for the Special District Risk Management Authority Board of Directors, information about the CALAFCO Annual

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Conference and the California Special Districts Association magazine. She reports that the May Agenda will include adoption of the resolution for the consolidation of the Victor Valley and Baldy Mesa Water Districts and related final actions, the annexation of three Bloomington islands to the City of Fontana, and the opening of the discussion on the formation of the Phelan Pinon Hills Community Services District. She reports that so far, the June Agenda is light, including services reviews for County Service Areas 42 and 64 and a City of Fontana annexation. She reports she is going on vacation from June 6 to June 18.

COMMISSIONER COMMENTS

Chairman Biane calls for comments from the Commissioners. There are none.

COMMENTS FROM THE PUBLIC

Chairman Biane calls for comments from the public.

Doug Robertson, Deputy City Manager, City of Victorville, provides a progress report on the consolidation that Ms. McDonald reported will be back on the May agenda. He says the City has met with many of the employees from the Districts and a couple of affected City employees; that there have been positive comments from them and that is going very well. He reports that the City met with management staffs of both Districts to form a team, along with selected City management staff, to outline the structure of the new consolidated District and he says they worked diligently over a two day period to iron out all the details. Mr. Robertson thanks the Commission for its vote last month and says that without that vote, this process would have been very difficult. He thanks Ms. McDonald and Legal Counsel Clark Alsop for their assistance on the Asset and Liability Transfer Agreement. He reports that both the Employee Transition Plan and the Transfer Agreement were on the Victorville City Council Agenda last night and were approved; that they are on the Victor Valley Water District's Agenda tonight and on the Baldy Mesa Water District's Agenda tomorrow night. He says they hopefully will be approved by those entities.

**THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COMMISSION, THE HEARING IS
ADJOURNED AT 10:53 A.M.**

ATTEST:

DEBBY CHAMBERLIN
Clerk to the Commission

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Chairman